

104TH CONGRESS
2D SESSION

S. 1815

To provide for improved regulation of the securities markets, eliminate excess securities fees, reduce the costs of investing, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23, 1996

Mr. GRAMM (for himself, Mr. D'AMATO, Mr. DODD, Mr. BRYAN, and Ms. MOSELEY-BRAUN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To provide for improved regulation of the securities markets, eliminate excess securities fees, reduce the costs of investing, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Securities Investment Promotion Act of 1996”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Severability.

TITLE I—INVESTMENT ADVISERS INTEGRITY ACT

- Sec. 101. Short title.
- Sec. 102. Funding for enhanced enforcement priority.
- Sec. 103. Improved supervision through State and Federal cooperation.
- Sec. 104. Interstate cooperation.
- Sec. 105. Disqualification of convicted felons.

TITLE II—FACILITATING INVESTMENT IN MUTUAL FUNDS

- Sec. 201. Short title.
- Sec. 202. Funds of funds.
- Sec. 203. Flexible registration of securities.
- Sec. 204. Facilitating use of current information in advertising.
- Sec. 205. Variable insurance contracts.
- Sec. 206. Prohibition on deceptive investment company names.
- Sec. 207. Excepted investment companies.
- Sec. 208. Performance fees exemptions.

TITLE III—REDUCING THE COST OF SAVING AND INVESTMENT

- Sec. 301. Exemption for economic, business, and industrial development companies.
- Sec. 302. Intrastate closed-end investment company exemption.
- Sec. 303. Definition of eligible portfolio company.
- Sec. 304. Definition of business development company.
- Sec. 305. Acquisition of assets by business development companies.
- Sec. 306. Capital structure amendments.
- Sec. 307. Filing of written statements.
- Sec. 308. Facilitating national securities markets.
- Sec. 309. Regulatory flexibility.
- Sec. 310. Analysis of economic effects of regulation.
- Sec. 311. Privatization of EDGAR.
- Sec. 312. Improving coordination of supervision.
- Sec. 313. Increased access to foreign business information.
- Sec. 314. Short-form registration.
- Sec. 315. Church employee pension plans.
- Sec. 316. Promoting global preeminence of American securities markets.

1 **SEC. 2. SEVERABILITY.**

2 If any provision of this Act, an amendment made by
3 this Act, or the application of such provision or amend-
4 ment to any person or circumstance is held to be unconsti-
5 tutional, the remainder of this Act, the amendments made
6 by this Act, and the application of the provisions of such
7 to any person or circumstance shall not be affected
8 thereby.

1 **TITLE I—INVESTMENT ADVISERS**
 2 **INTEGRITY ACT**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Investment Advisers
 5 Integrity Act”.

6 **SEC. 102. FUNDING FOR ENHANCED ENFORCEMENT**
 7 **PRIORITY.**

8 There are authorized to be appropriated to the Secu-
 9 rities and Exchange Commission, for the enforcement of
 10 the Investment Advisers Act of 1940, not more than
 11 \$16,000,000 in each of fiscal years 1997 and 1998.

12 **SEC. 103. IMPROVED SUPERVISION THROUGH STATE AND**
 13 **FEDERAL COOPERATION.**

14 (a) STATE AND FEDERAL RESPONSIBILITIES.—The
 15 Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et
 16 seq.) is amended by inserting after section 203 the follow-
 17 ing new section:

18 **“SEC. 203A. STATE AND FEDERAL RESPONSIBILITIES.**

19 **“(a) ADVISERS SUBJECT TO STATE AUTHORITIES.—**

20 **“(1) IN GENERAL.—**No investment adviser that
 21 is regulated or required to be regulated as an invest-
 22 ment adviser in the State in which it maintains its
 23 principal office and place of business shall register
 24 under section 203(a), unless the adviser—

1 “(A) has assets under management of not
 2 less than \$25,000,000, or such higher amount
 3 as the Commission may, by rule, deem appro-
 4 priate in accordance with the purposes of this
 5 title; or

6 “(B) is an adviser to an investment com-
 7 pany registered under title I of this Act, or a
 8 company that has elected to be a business de-
 9 velopment company pursuant to section 54 of
 10 title I of this Act.

11 “(2) DEFINITION.—For purposes of this sub-
 12 section, the term ‘assets under management’ means
 13 the securities portfolios with respect to which an in-
 14 vestment adviser provides continuous and regular
 15 supervisory or management services.

16 “(b) ADVISERS SUBJECT TO COMMISSION
 17 AUTHORITY.—

18 “(1) IN GENERAL.—No law of any State or po-
 19 litical subdivision thereof requiring the registration,
 20 licensing, or qualification as an investment adviser
 21 or employee of an investment adviser shall apply to
 22 any person—

23 “(A) that is registered under section 203
 24 as an investment adviser, or that is an em-
 25 ployee of such a person; or

1 “(B) that is not registered under section
2 203 because that person is excepted from the
3 definition of an investment adviser under sec-
4 tion 202(a)(11).

5 “(2) LIMITATION.—Nothing in this subsection
6 shall prohibit the securities commission (or any
7 agency or office performing like functions) of any
8 State from—

9 “(A) requiring the filing with such com-
10 mission, agency, or office of any document filed
11 with the Commission by an investment adviser,
12 or any other document, whether or not such
13 document may be required to be filed with the
14 Commission, relating to an employee of an in-
15 vestment adviser solely for notice purposes, to-
16 gether with a consent to service of process and
17 requisite fees; or

18 “(B) investigating and bringing enforce-
19 ment actions with respect to fraud or deceit
20 against an investment adviser or person associ-
21 ated with an investment adviser.

22 “(c) EXEMPTIONS.—The Commission may, by rule or
23 regulation upon its own motion, or by order upon applica-
24 tion, exempt any person or class of persons from the prohi-
25 bitions of subsection (a) and permit the registration with

1 the Commission of any person or class of persons to which
 2 the application of subsection (a) would be unfair, a burden
 3 on interstate commerce, or otherwise inconsistent with the
 4 purposes of this section.

5 “(d) FILING DEPOSITORIES.—The Commission may,
 6 by rule, require an investment adviser—

7 “(1) to file with the Commission any fee, appli-
 8 cation, report, or notice required by this title or by
 9 the rules issued under this title through any entity
 10 designated by the Commission for that purpose; and

11 “(2) to pay the reasonable costs associated with
 12 such filing.

13 “(e) STATE ASSISTANCE.—Upon request of the secu-
 14 rities commissioner (or any agency or officer performing
 15 like functions) of any State, the Commission may provide
 16 such training, technical assistance, or other reasonable as-
 17 sistance in connection with the regulation of investment
 18 advisers by the State.”.

19 (b) ADVISERS NOT ELIGIBLE TO REGISTER.—Sec-
 20 tion 203 of the Investment Advisers Act of 1940 (15
 21 U.S.C. 80b–3) is amended—

22 (1) in subsection (c), in the matter immediately
 23 following paragraph (2), by inserting “and that the
 24 applicant is not prohibited from registering as an in-

1 vestment adviser under section 203A” after “satis-
2 fied”; and

3 (2) in subsection (h), in the second sentence—

4 (A) by striking “existence or” and insert-
5 ing “existence,”; and

6 (B) by inserting “or is prohibited from
7 registering as an investment adviser under sec-
8 tion 203A,” after “adviser,”.

9 (c) CONFORMING AMENDMENT.—Section 203(a) of
10 the Investment Advisers Act of 1940 (15 U.S.C. 80b–
11 3(a)) is amended by striking “subsection (b)” and insert-
12 ing “subsection (b) and section 203A”.

13 **SEC. 104. INTERSTATE COOPERATION.**

14 Section 222 of the Investment Advisers Act of 1940
15 (15 U.S.C. 80b–18a) is amended to read as follows:

16 **“SEC. 222. STATE REGULATION OF INVESTMENT ADVISERS.**

17 “(a) JURISDICTION OF STATE REGULATORS.—Noth-
18 ing in this title shall affect the jurisdiction of the securities
19 commissioner (or any agency or officer performing like
20 functions) of any State over any security or any person
21 insofar as it does not conflict with the provisions of this
22 title or the rules and regulations thereunder.

23 “(b) DUAL COMPLIANCE PURPOSES.—No State may
24 enforce any law or regulation that would require an invest-
25 ment adviser to maintain any books or records in addition

1 to those required under the laws of the State in which
 2 it maintains its principal place of business, if the invest-
 3 ment adviser—

4 “(1) is registered or licensed as such in the
 5 State in which it maintains its principal place of
 6 business; and

7 “(2) is in compliance with the applicable books
 8 and records requirements of the State in which it
 9 maintains its principle place of business.

10 “(c) LIMITATION ON CAPITAL AND BOND REQUIRE-
 11 MENTS.—No State may enforce any law or regulation that
 12 would require an investment adviser to maintain a higher
 13 minimum net capital or to post any bond in addition to
 14 any that is required under the laws of the State in which
 15 it maintains its principal place of business, if the invest-
 16 ment adviser—

17 “(1) is registered or licensed as such in the
 18 State in which it maintains its principal place of
 19 business; and

20 “(2) is in compliance with the applicable net
 21 capital or bonding requirements of the State in
 22 which it maintains its principal place of business.”.

23 **SEC. 105. DISQUALIFICATION OF CONVICTED FELONS.**

24 (a) AMENDMENT.—Section 203(e) of the Investment
 25 Advisers Act of 1940 (15 U.S.C. 80b–3(e)) is amended—

1 (1) by redesignating paragraphs (3) through
 2 (7) as paragraphs (4) through (8), respectively; and

3 (2) by inserting after paragraph (2) the follow-
 4 ing new paragraph:

5 “(3) has been convicted during the 10-year pe-
 6 riod preceding the date of filing of any application
 7 for registration, or at any time thereafter, of—

8 “(A) any crime that is punishable by im-
 9 prisonment for 1 or more years, and that is not
 10 described in paragraph (2); or

11 “(B) a substantially equivalent crime by a
 12 foreign court of competent jurisdiction.”.

13 (b) CONFORMING AMENDMENTS.—Section 203 of the
 14 Investment Advisers Act of 1940 (15 U.S.C. 80b–3) is
 15 amended—

16 (1) in subsection (e)(6) (as redesignated by
 17 subsection (a) of this section), by striking “this
 18 paragraph (5)” and inserting “this paragraph”;

19 (2) in subsection (f)—

20 (A) by striking “paragraph (1), (4), (5), or
 21 (7)” and inserting “paragraph (1), (5), (6), or
 22 (8)”; and

23 (B) by striking “paragraph (3)” and in-
 24 serting “paragraph (4)”; and

1 (3) in subsection (i)(1)(D), by striking “section
2 203(e)(5) of this title” and inserting “subsection
3 (e)(6) of this section”.

4 **TITLE II—FACILITATING** 5 **INVESTMENT IN MUTUAL FUNDS**

6 **SEC. 201. SHORT TITLE.**

7 This title may be cited as the “Investment Company
8 Act Amendments of 1996”.

9 **SEC. 202. FUNDS OF FUNDS.**

10 Section 12(d)(1) of the Investment Company Act of
11 1940 (15 U.S.C. 80a–12(d)(1)) is amended—

12 (1) in subparagraph (E)(iii)—

13 (A) by striking “in the event such invest-
14 ment company is not a registered investment
15 company,”; and

16 (B) by inserting “in the event that such in-
17 vestment company is not a registered invest-
18 ment company,” after “(bb)”;

19 (2) by redesignating subparagraphs (G) and
20 (H) as subparagraphs (H) and (I), respectively;

21 (3) by inserting after subparagraph (F) the fol-
22 lowing new subparagraph:

23 “(G) This paragraph does not apply to securities of
24 a registered open-end investment company or a registered
25 unit investment trust (hereafter in this subparagraph re-

1 ferred to as the ‘acquired company’) purchased or other-
2 wise acquired by a registered open-end investment com-
3 pany or a registered unit investment trust (hereafter in
4 this subparagraph referred to as the ‘acquiring company’)
5 if—

6 “(i) the acquired company and the acquiring
7 company are part of the same group of investment
8 companies;

9 “(ii) the securities of the acquired company, se-
10 curities of other registered open-end investment
11 companies and registered unit investment trusts that
12 are part of the same group of investment companies,
13 Government securities, and short-term paper are the
14 only investments held by the acquiring company;

15 “(iii)(I) the acquiring company does not pay
16 and is not assessed any charges or fees for distribu-
17 tion-related activities with respect to securities of the
18 acquired company, unless the acquiring company
19 does not charge a sales load or other fees or charges
20 for distribution-related activities; or

21 “(II) any sales loads and other distribution-re-
22 lated fees charged with respect to securities of the
23 acquiring company, when aggregated with any sales
24 load and distribution-related fees paid by the acquir-
25 ing company with respect to securities of the ac-

1 quired fund, are not excessive under rules adopted
2 pursuant to section 22(b) or section 22(c) of this
3 title by a securities association registered under sec-
4 tion 15A of the Securities Exchange Act of 1934
5 or the Commission;

6 “(iv) the acquired company has a policy that
7 prohibits it from acquiring any securities of reg-
8 istered open-end investment companies or registered
9 unit investment trusts in reliance on this subpara-
10 graph or subparagraph (F); and

11 “(v) such acquisition is not in contravention of
12 such rules and regulations as the Commission may
13 from time to time prescribe with respect to acquisi-
14 tions in accordance with this subparagraph, as nec-
15 essary and appropriate for the protection of
16 investors.

17 For purposes of this subparagraph, the term ‘group of in-
18 vestment companies’ means any 2 or more registered in-
19 vestment companies that hold themselves out to investors
20 as related companies for purposes of investment and inves-
21 tor services.”; and

22 (4) by adding at the end the following new sub-
23 paragraph:

24 “(J) The Commission, by rules and regulations, upon
25 its own motion, or by order upon application, may condi-

tionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of this subsection, if and to the extent that such exemption is consistent with the public interest and the protection of investors.”.

SEC. 203. FLEXIBLE REGISTRATION OF SECURITIES.

(a) AMENDMENTS TO REGISTRATION STATEMENTS.—Section 24(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(e)) is amended—

(1) by striking paragraphs (1) and (2);

(2) by redesignating paragraph (3) as subsection (e); and

(3) in subsection (e) (as so redesignated) by striking “pursuant to this subsection or otherwise”.

(b) REGISTRATION OF INDEFINITE AMOUNT OF SECURITIES.—Section 24(f) of the Investment Company Act of 1940 (15 U.S.C. 80a–24(f)) is amended to read as follows:

“(f) REGISTRATION OF INDEFINITE AMOUNT OF SECURITIES.—

“(1) REGISTRATION OF SECURITIES.—Upon the effective date, as provided by section 8 of the Securities Act of 1933, of its registration statement, a face-amount certificate company, open-end management company, or unit investment trust, shall be

1 deemed to have registered an indefinite amount of
2 securities.

3 “(2) PAYMENT OF REGISTRATION FEES.—Not
4 later than 90 days after the end of the fiscal year
5 of an entity referred to in paragraph (1), the entity
6 shall pay a registration fee to the Commission, cal-
7 culated in the manner specified in section 6(b) of the
8 Securities Act of 1933, based on the aggregate sales
9 price for which its securities (including, for purposes
10 of this paragraph, all securities issued pursuant to
11 a dividend reinvestment plan) were sold during the
12 previous fiscal year of the entity, reduced by—

13 “(A) the aggregate redemption or repur-
14 chase price of the securities of the entity during
15 that year; and

16 “(B) the aggregate redemption or repur-
17 chase price of the securities of the entity during
18 any prior fiscal year ending not more than 1
19 year before the date of enactment of the Invest-
20 ment Company Act Amendments of 1996, that
21 were not used previously by the entity to reduce
22 fees payable under this section.

23 “(3) INTEREST DUE ON LATE PAYMENT.—An
24 entity paying the fee required by this subsection or
25 any portion thereof more than 90 days after the end

1 of the fiscal year of the entity shall pay to the Com-
 2 mission interest on unpaid amounts, compounded
 3 daily, at the underpayment rate established by the
 4 Secretary of the Treasury pursuant to section 3717
 5 of title 31, United States Code. The payment of in-
 6 terest pursuant to this paragraph shall not preclude
 7 the Commission from bringing an action to enforce
 8 the requirements of paragraph (2).

9 “(4) RULEMAKING AUTHORITY.—The Commis-
 10 sion may adopt rules and regulations to implement
 11 this subsection.”.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall become effective 180 days after the date
 14 of enactment of this Act.

15 **SEC. 204. FACILITATING USE OF CURRENT INFORMATION**
 16 **IN ADVERTISING.**

17 Section 24 of the Investment Company Act of 1940
 18 (15 U.S.C. 80a–24) is amended by adding at the end the
 19 following new subsection:

20 “(g) ADDITIONAL PROSPECTUSES.—In addition to
 21 any prospectus permitted or required by section 10(a) of
 22 the Securities Act of 1933, the Commission shall permit,
 23 by rules or regulations deemed necessary or appropriate
 24 in the public interest or for the protection of investors,
 25 the use of a prospectus for the purposes of section 5(b)(1)

1 of that Act with respect to securities issued by a registered
 2 investment company. Such a prospectus, which may in-
 3 clude information the substance of which is not included
 4 in the prospectus specified in section 10(a) of the Securi-
 5 ties Act of 1933, shall be deemed to be permitted by sec-
 6 tion 10(b) of that Act.”.

7 **SEC. 205. VARIABLE INSURANCE CONTRACTS.**

8 (a) UNIT INVESTMENT TRUST TREATMENT.—Sec-
 9 tion 26 of the Investment Company Act of 1940 (15
 10 U.S.C. 80a–26) is amended by adding at the end the fol-
 11 lowing new subsection:

12 “(e) EXEMPTION.—

13 “(1) IN GENERAL.—Subsection (a) does not
 14 apply to any registered separate account funding
 15 variable insurance contracts, or to the sponsoring in-
 16 surance company and principal underwriter of such
 17 account.

18 “(2) LIMITATION ON SALES.—It shall be unlaw-
 19 ful for any registered separate account funding vari-
 20 able insurance contracts, or for the sponsoring in-
 21 surance company of such account, to sell any such
 22 contract, unless—

23 “(A) the fees and charges deducted under
 24 the contract, in the aggregate, are reasonable in
 25 relation to the services rendered, the expenses

1 expected to be incurred, and the risks assumed
2 by the insurance company, and the insurance
3 company so represents in the registration state-
4 ment for the contract; and

5 “(B) the insurance company—

6 “(i) complies with all other applicable
7 provisions of this section, as if it were a
8 trustee or custodian of the registered sepa-
9 rate account;

10 “(ii) files with the insurance regu-
11 latory authority of a State or territory of
12 the United States or of the District of Co-
13 lumbia in which is located the principal
14 place of business of the insurance com-
15 pany, an annual statement of its financial
16 condition, which most recent statement in-
17 dicates that the insurance company has a
18 combined capital and surplus, if a stock
19 company, or an unassigned surplus, if a
20 mutual company, of not less than
21 \$1,000,000, or such other amount as the
22 Commission may from time to time pre-
23 scribe by rule, as necessary or appropriate
24 in the public interest or for the protection
25 of investors; and

1 “(iii) together with its registered sepa-
2 rate accounts, is supervised and examined
3 periodically by the insurance authority of
4 such State, territory, or the District of Co-
5 lumbia.

6 “(3) FEES AND CHARGES.—For purposes of
7 paragraph (2), the fees and charges deducted under
8 the contract shall include all fees and charges im-
9 posed for any purpose and in any manner.

10 “(4) REGULATORY AUTHORITY.—The Commis-
11 sion may issue such rules and regulations to carry
12 out paragraph (2)(A) as it determines are necessary
13 or appropriate in the public interest or for the pro-
14 tection of investors.”.

15 (b) PERIODIC PAYMENT PLAN TREATMENT.—Sec-
16 tion 27 of the Investment Company Act of 1940 (15
17 U.S.C. 80a–27) is amended by adding at the end the fol-
18 lowing new subsection:

19 “(i)(1) This section shall not apply to any registered
20 separate account funding variable insurance contracts, or
21 to the sponsoring insurance company and principal under-
22 writer of such account, except as provided in paragraph
23 (2).

24 “(2) It shall be unlawful for any registered separate
25 account funding variable insurance contracts, or for the

1 sponsoring insurance company of such account, to sell any
 2 such contract unless—

3 “(A) such contract is a redeemable security;
 4 and

5 “(B) the insurance company complies with sec-
 6 tion 26(e) and any rules or regulations adopted by
 7 the Commission thereunder.”.

8 **SEC. 206. PROHIBITION ON DECEPTIVE INVESTMENT COM-**
 9 **PANY NAMES.**

10 Section 35(d) of the Investment Company Act of
 11 1940 (15 U.S.C. 80a–34(d)) is amended to read as
 12 follows:

13 “(d) It shall be unlawful for any registered invest-
 14 ment company to adopt as a part of the name or title of
 15 such company, or of any securities of which it is the issuer,
 16 any word or words that are materially deceptive or mis-
 17 leading. The Commission is authorized, by rule, regula-
 18 tion, or order, to define such names or titles as are materi-
 19 ally deceptive or misleading.”.

20 **SEC. 207. EXCEPTED INVESTMENT COMPANIES.**

21 (a) AMENDMENTS.—Section 3(c) of the Investment
 22 Company Act of 1940 (15 U.S.C. 80a–3(c)) is amended—

23 (1) in paragraph (1), by inserting after the first
 24 sentence the following: “Such issuer shall be deemed
 25 to be an investment company for purposes of the

1 limitations set forth in subparagraphs (A)(i) and
 2 (B)(i) of section 12(d)(1) governing the purchase or
 3 other acquisition by such issuer of any security is-
 4 sued by any registered investment company and the
 5 sale of any security issued by any registered open-
 6 end investment company to any such issuer.”;

7 (2) in subparagraph (A) of paragraph (1)—

8 (A) by inserting after “issuer,” the first
 9 place that term appears, the following: “and is
 10 or, but for the exception provided for in this
 11 paragraph or paragraph (7), would be an in-
 12 vestment company,”; and

13 (B) by striking “unless, as of” and all that
 14 follows through the end of the subparagraph
 15 and inserting a period; and

16 (3) by striking paragraph (7) and inserting the
 17 following:

18 “(7)(A) Any issuer, the outstanding securities
 19 of which are owned exclusively by persons who, at
 20 the time of acquisition of such securities, are quali-
 21 fied purchasers, and which is not making and does
 22 not at that time propose to make a public offering
 23 of such securities. Securities that are owned by per-
 24 sons who received the securities from a qualified
 25 purchaser as a gift or bequest, or in a case in which

1 the transfer was caused by legal separation, divorce,
2 death, or other involuntary event, shall be deemed to
3 be owned by a qualified purchaser, subject to such
4 rules, regulations, and orders as the Commission
5 may prescribe as necessary or appropriate in the
6 public interest or for the protection of investors.

7 “(B) Notwithstanding subparagraph (A), an is-
8 suer is within the exception provided by this para-
9 graph if—

10 “(i) in addition to qualified purchasers,
11 outstanding securities of that issuer are bene-
12 ficially owned by not more than 100 persons
13 who are not qualified purchasers, if—

14 “(I) such persons acquired such secu-
15 rities on or before April 30, 1996; and

16 “(II) at the time such securities were
17 acquired by such persons, the issuer was
18 excepted by paragraph (1); and

19 “(ii) prior to availing itself of the exception
20 provided by this paragraph—

21 “(I) such issuer has disclosed to each
22 beneficial owner that future investors will
23 be limited to qualified purchasers, and that
24 ownership in such issuer is no longer lim-
25 ited to not more than 100 persons; and

1 “(II) concurrently with or after such
2 disclosure, such issuer has provided each
3 beneficial owner with a reasonable oppor-
4 tunity to redeem any part or all of their in-
5 terests in the issuer, notwithstanding any
6 agreement to the contrary between such is-
7 suer and persons, for their proportionate
8 share of the issuer’s net assets.

9 “(C) Each person that elects to redeem under
10 subparagraph (B)(ii)(II) shall receive an amount in
11 cash equal to that person’s proportionate share of
12 the issuer’s net assets, unless the issuer elects to
13 provide such person with the option of receiving, and
14 such person agrees to receive, all or a portion of
15 such person’s share in assets of the issuer. If the is-
16 suer elects to provide such persons with such an op-
17 portunity, disclosure concerning such opportunity
18 shall be made in the disclosure required by subpara-
19 graph (B)(ii)(I).

20 “(D) An issuer that is excepted under this
21 paragraph shall nonetheless be deemed to be an in-
22 vestment company for purposes of the limitations set
23 forth in subparagraphs (A)(i) and (B)(i) of section
24 12(d)(1) relating to the purchase or other acquisi-
25 tion by such issuer of any security issued by any

1 registered investment company and the sale of any
 2 security issued by any registered open-end invest-
 3 ment company to any such issuer.

4 “(E) For purposes of determining compliance
 5 with this paragraph and paragraph (1), an issuer
 6 that is otherwise excepted under this paragraph and
 7 an issuer that is otherwise excepted under paragraph
 8 (1) shall not be treated by the Commission as being
 9 a single issuer for purposes of determining whether
 10 the outstanding securities of the issuer excepted
 11 under paragraph (1) are beneficially owned by not
 12 more than 100 persons or whether the outstanding
 13 securities of the issuer excepted under this para-
 14 graph are owned by persons that are not qualified
 15 purchasers. Nothing in this subparagraph shall be
 16 construed to establish that a person is a bona fide
 17 qualified purchaser for purposes of this paragraph
 18 or a bona fide beneficial owner for purposes of para-
 19 graph (1).”.

20 (b) DEFINITION OF QUALIFIED PURCHASER.—Sec-
 21 tion 2(a) of the Investment Company Act of 1940 (15
 22 U.S.C. 80a–2(a)) is amended by adding at the end the
 23 following new paragraph:

24 “(51)(A) ‘Qualified purchaser’ means—

1 “(i) any natural person who owns at least
2 \$5,000,000 in investments, as defined by the
3 Commission;

4 “(ii) any company that owns not less than
5 \$5,000,000 in investments and that is owned
6 directly or indirectly by or for 2 or more natu-
7 ral persons who are related as siblings or
8 spouse (including former spouses), or direct lin-
9 eal descendants by birth, marriage, or adoption,
10 spouses of such persons, the estates of such
11 persons, or foundations, charitable organiza-
12 tions, or trusts established by or for the benefit
13 of such persons;

14 “(iii) any trust that is not covered by sub-
15 paragraph (B) and that was not formed for the
16 specific purpose of acquiring the securities of-
17 fered, as to which the trustee or other person
18 authorized to make decisions with respect to the
19 trust, and each settlor or other person who has
20 contributed assets to the trust, is a person de-
21 scribed in clause (i), (ii), or (iv);

22 “(iv) any person, acting for its own ac-
23 count or the accounts of other qualified pur-
24 chasers, who in the aggregate owns and invests

1 on a discretionary basis, not less than
2 \$25,000,000 in investments; or

3 “(v) any person that the Commission, by
4 rule or regulation, has determined does not
5 need the protections of this title, after consider-
6 ation of factors such as—

7 “(I) a high degree of financial sophis-
8 tication, including extensive knowledge of
9 and experience in financial matters;

10 “(II) a substantial amount of assets
11 owned or under management;

12 “(III) relationship with an issuer; or

13 “(IV) such other factors as the Com-
14 mission may determine to be consistent
15 with the purposes of this paragraph.

16 “(B) The Commission may adopt such rules
17 and regulations applicable to the persons and trusts
18 specified in clauses (i) through (v) of subparagraph
19 (A) as it determines are necessary or appropriate in
20 the public interest and for the protection of inves-
21 tors.

22 “(C) The term ‘qualified purchaser’ does not in-
23 clude a company that, but for the exceptions pro-
24 vided for in paragraph (1) or (7) of section 3(c),
25 would be an investment company (hereafter in this

1 paragraph referred to as an ‘excepted investment
 2 company’), unless all beneficial owners of its out-
 3 standing securities (other than short-term paper),
 4 determined in accordance with section 3(c)(1)(A),
 5 that acquired such securities on or before April 30,
 6 1996 (hereafter in this paragraph referred to as
 7 ‘pre-amendment beneficial owners’), and all pre-
 8 amendment beneficial owners of the outstanding se-
 9 curities (other than short-term paper) of any ex-
 10 cepted investment company that, directly or indi-
 11 rectly, owns any outstanding securities of such ex-
 12 cepted investment company, have consented to its
 13 treatment as a qualified purchaser.”.

14 (c) CONFORMING AMENDMENT.—Section 3(a) of the
 15 Investment Company Act of 1940 (15 U.S.C. 80a–3(a))
 16 is amended in the matter immediately following paragraph
 17 (3)—

18 (1) by inserting “(i)” after “of the owner”; and

19 (2) by inserting before the period the following:

20 “, and (ii) which are not relying on the exception
 21 from the definition of investment company in para-
 22 graph (1) or (7) of subsection (c)”.

23 (d) RULEMAKING REQUIRED.—

24 (1) IMPLEMENTATION OF SECTION 3(c)(1)(B).—

25 Not later than 1 year after the date of enactment

1 of this Act, the Commission shall prescribe rules to
2 implement the requirements of section 3(c)(1)(B) of
3 the Investment Company Act of 1940 (15 U.S.C.
4 80a-3(c)(1)(B)).

5 (2) IDENTIFICATION OF INVESTMENTS.—Not
6 later than 180 days after the date of enactment of
7 this Act, the Commission shall prescribe rules defin-
8 ing or otherwise identifying “investments” for the
9 purposes of section 2(a)(51) of the Investment Com-
10 pany Act of 1940, as amended by this Act.

11 (3) EMPLOYEE EXCEPTION.—Not later than 1
12 year after the date of enactment of this Act, the
13 Commission shall prescribe rules pursuant to its au-
14 thority under section 6 of the Investment Company
15 Act of 1940 to permit the ownership by knowledge-
16 able employees of an issuer of the securities or an
17 affiliated person without loss of the exception of the
18 issuer under paragraph (1) or (7) of section 3(c) of
19 that Act from treatment as an investment company
20 under that Act.

21 (e) EFFECTIVE DATE.—The amendments made by
22 this section shall become effective on the earlier of—

23 (1) 180 days after the date of enactment of this
24 Act; or

1 (2) the date on which the rulemaking required
2 under subsection (d)(2) is completed.

3 **SEC. 208. PERFORMANCE FEES EXEMPTIONS.**

4 Section 205 of the Investment Advisers Act of 1940
5 (15 U.S.C. 80b–5) is amended—

6 (1) in subsection (b)—

7 (A) in paragraph (2), by striking “or” at
8 the end;

9 (B) in paragraph (3), by striking the pe-
10 riod at the end and inserting “; or”; and

11 (C) by adding at the end the following new
12 paragraph:

13 “(4) apply to an investment advisory contract
14 with a company excepted from the definition of an
15 investment company under section 3(c)(7) of title I
16 of this Act.”; and

17 (2) by adding at the end the following new sub-
18 section:

19 “(e) The Commission, by rule or regulation, upon its
20 own motion, or by order upon application, may condi-
21 tionally or unconditionally exempt any person or trans-
22 action, or any class or classes of persons or transactions,
23 from subsection (a)(1), if and to the extent that the ex-
24 emption relates to an investment advisory contract with—

1 “(1) any person that the Commission deter-
 2 mines does not need the protections of subsection
 3 (a)(1), on the basis of such factors as financial so-
 4 phistication, net worth, knowledge and experience in
 5 financial matters, amount of assets under manage-
 6 ment, relationship with a registered investment ad-
 7 viser, and such other factors as the Commission de-
 8 termines are consistent with this section; or

9 “(2) a person who is not a resident of the Unit-
 10 ed States.”.

11 **TITLE III—REDUCING THE COST** 12 **OF SAVING AND INVESTMENT**

13 **SEC. 301. EXEMPTION FOR ECONOMIC, BUSINESS, AND IN-** 14 **DUSTRIAL DEVELOPMENT COMPANIES.**

15 Section 6(a) of the Investment Company Act of 1940
 16 (15 U.S.C. 80a–6(a)) is amended by adding at the end
 17 the following new paragraph:

18 “(5)(A) Any company that is not engaged in
 19 the business of issuing redeemable securities, the op-
 20 erations of which are subject to regulation by the
 21 State in which the company is organized under a
 22 statute governing entities that provide financial or
 23 managerial assistance to enterprises doing business,
 24 or proposing to do business, in that State if—

1 “(i) the organizational documents of the
2 company state that the activities of the com-
3 pany are limited to the promotion of economic,
4 business, or industrial development in the State
5 through the provision of financial or managerial
6 assistance to enterprises doing business, or pro-
7 posing to do business, in that State, and such
8 other activities that are incidental or necessary
9 to carry out that purpose;

10 “(ii) immediately following each sale of the
11 securities of the company by the company or
12 any underwriter for the company, not less than
13 80 percent of the securities of the company
14 being offered in such sale, on a class-by-class
15 basis, are held by persons who reside or who
16 have a substantial business presence in that
17 State;

18 “(iii) the securities of the company are
19 sold, or proposed to be sold, by the company or
20 by any underwriter for the company, solely to
21 accredited investors, as that term is defined in
22 section 2(15) of the Securities Act of 1933, or
23 to such other persons that the Commission, as
24 necessary or appropriate in the public interest

1 and consistent with the protection of investors,
2 may permit by rule, regulation, or order; and

3 “(iv) the company does not purchase any
4 security issued by an investment company or by
5 any company that would be an investment com-
6 pany except for the exclusions from the defini-
7 tion of the term “investment company” under
8 paragraph (1) or (7) of section 3(c), other
9 than—

10 “(I) any debt security that is rated in-
11 vestment grade by not less than 1 nation-
12 ally recognized statistical rating organiza-
13 tion; or

14 “(II) any security issued by a reg-
15 istered open-end investment company that
16 is required by its investment policies to in-
17 vest not less than 65 percent of its total
18 assets in securities described in subclause
19 (I) or securities that are determined by
20 such registered open-end investment com-
21 pany to be comparable in quality to securi-
22 ties described in subclause (I).

23 “(B) Notwithstanding the exemption provided
24 by this paragraph, section 9 (and, to the extent nec-
25 essary to enforce section 9, sections 38 through 51)

1 shall apply to a company described in this paragraph
 2 as if the company were an investment company reg-
 3 istered under this title.

4 “(C) Any company proposing to rely on the ex-
 5 emption provided by this paragraph shall file with
 6 the Commission a notification stating that the com-
 7 pany intends to do so, in such form and manner as
 8 the Commission may prescribe by rule.

9 “(D) Any company meeting the requirements of
 10 this paragraph may rely on the exemption provided
 11 by this paragraph upon filing with the Commission
 12 the notification required by subparagraph (C), until
 13 such time as the Commission determines by order
 14 that such reliance is not in the public interest or is
 15 not consistent with the protection of investors.

16 “(E) The exemption provided by this paragraph
 17 may be subject to such additional terms and condi-
 18 tions as the Commission may by rule, regulation, or
 19 order determine are necessary or appropriate in the
 20 public interest or for the protection of investors.”.

21 **SEC. 302. INTRASTATE CLOSED-END INVESTMENT COM-**
 22 **PANY EXEMPTION.**

23 Section 6(d)(1) of the Investment Company Act of
 24 1940 (15 U.S.C. 80a-6(d)(1)) is amended by striking
 25 “\$100,000” and inserting “\$10,000,000, or such other

1 amount as the Commission may set by rule, regulation,
2 or order”.

3 **SEC. 303. DEFINITION OF ELIGIBLE PORTFOLIO COMPANY.**

4 Section 2(a)(46)(C) of the Investment Company Act
5 of 1940 (15 U.S.C. 80a-2(a)(46)(C)) is amended—

6 (1) in clause (ii), by striking “or” at the end;

7 (2) by redesignating clause (iii) as clause (iv);

8 and

9 (3) by inserting after clause (ii) the following:

10 “(iii) it has total assets of not more
11 than \$4,000,000, and capital and surplus
12 (shareholders’ equity less retained earn-
13 ings) of not more than \$2,000,000, except
14 that the Commission may adjust such
15 amounts by rule, regulation, or order to re-
16 flect changes in 1 or more generally ac-
17 cepted indices or other indicators for small
18 businesses; or”.

19 **SEC. 304. DEFINITION OF BUSINESS DEVELOPMENT COM-**
20 **PANY.**

21 Section 2(a)(48)(B) of the Investment Company Act
22 of 1940 (15 U.S.C. 80a-2(a)(48)(B)) is amended by in-
23 serting before the semicolon at the end the following: “,
24 and provided further that a business development com-
25 pany need not make available significant managerial as-

1 sistance with respect to any company described in section
 2 2(a)(46)(C)(iii), or with respect to any other company that
 3 meets such criteria as the Commission may by rule, regu-
 4 lation, or order permit, as consistent with the public inter-
 5 est, the protection of investors, and the purposes fairly in-
 6 tended by the policy and provisions of this title”.

7 **SEC. 305. ACQUISITION OF ASSETS BY BUSINESS DEVELOP-**
 8 **MENT COMPANIES.**

9 Section 55(a)(1)(A) of the Investment Company Act
 10 of 1940 (15 U.S.C. 80a-54(a)(1)(A)) is amended—

11 (1) by striking “or from any person” and in-
 12 serting “from any person”; and

13 (2) by inserting before the semicolon “, or from
 14 any other person, subject to such rules and regula-
 15 tions as the Commission may prescribe as necessary
 16 or appropriate in the public interest or for the pro-
 17 tection of investors”.

18 **SEC. 306. CAPITAL STRUCTURE AMENDMENTS.**

19 Section 61(a) of the Investment Company Act of
 20 1940 (15 U.S.C. 80a-60(a)) is amended—

21 (1) in paragraph (2), by striking “if such busi-
 22 ness development company” and all that follows
 23 through the end of paragraph (2) and inserting a
 24 period;

25 (2) in paragraph (3)(A)—

1 (A) by striking “senior securities rep-
 2 resenting indebtedness accompanied by”;

3 (B) inserting “accompanied by securities,”
 4 after “of such company,”; and

5 (C) in clause (ii), by striking “senior”; and
 6 (3) in paragraph (3)—

7 (A) in subparagraph (A), by striking
 8 “and” at the end;

9 (B) in subparagraph (B), by striking the
 10 period at the end of clause (iv) and inserting “;
 11 and”; and

12 (C) by inserting after subparagraph (B)
 13 the following new subparagraph:

14 “(C) a business development company may
 15 issue warrants, options, or rights to subscribe
 16 to, convert to, or purchase voting securities not
 17 accompanied by securities, if—

18 “(i) such warrants, options, or rights
 19 satisfy the conditions in clauses (i) and
 20 (iii) of subparagraph (A); and

21 “(ii) the proposal to issue such war-
 22 rants, options, or rights is authorized by
 23 the shareholders or partners of such busi-
 24 ness development company, and such issu-
 25 ance is approved by the required majority

1 (as defined in section 57(o)) of the direc-
 2 tors of or general partners in such com-
 3 pany on the basis that such issuance is in
 4 the best interests of the company and its
 5 shareholders or partners.”.

6 **SEC. 307. FILING OF WRITTEN STATEMENTS.**

7 Section 64(b)(1) of the Investment Company Act of
 8 1940 (15 U.S.C. 80a-63(b)(1)) is amended by inserting
 9 “and capital structure” after “portfolio”.

10 **SEC. 308. FACILITATING NATIONAL SECURITIES MARKETS.**

11 Section 18 of the Securities Act of 1933 (15 U.S.C.
 12 77r) is amended to read as follows:

13 **“SEC. 18. EXEMPTION FROM STATE CONTROL OF**
 14 **SECURITIES OFFERINGS.**

15 “(a) EXEMPTION FROM STATE LAW FOR REG-
 16 ISTERED SECURITIES.—Except with respect to offerings
 17 described in subsection (b) and as otherwise specifically
 18 provided in this section, no law, rule, regulation, order,
 19 or other administrative action of any State or Territory
 20 of the United States, or the District of Columbia, or any
 21 political subdivision thereof—

22 “(1) requiring, or with respect to, registration
 23 or qualification of securities or securities trans-
 24 actions shall directly or indirectly apply to an offer-

1 ing subject to a registration statement filed pursu-
2 ant to this title;

3 “(2) shall directly or indirectly prohibit, limit,
4 or impose conditions upon the use of any offering
5 document, including any prospectus contained in a
6 registration statement that has been filed with the
7 Commission; or

8 “(3) shall directly or indirectly prohibit, limit,
9 or impose conditions upon the offer or sale of any
10 security registered with the Commission under this
11 title based on the merits of such offering or issuer.

12 “(b) SPECIAL RULES FOR CERTAIN OFFERINGS.—
13 Except with respect to a security of an investment com-
14 pany that is registered under the Investment Company
15 Act of 1940, the provisions of subsection (a) shall not
16 apply to—

17 “(1) an offering—

18 “(A) by an issuer that is a blank check
19 company, as defined in section 7(b), a partner-
20 ship, a limited liability company, or a direct
21 participation investment program;

22 “(B) of penny stock; or

23 “(C) giving effect to a limited partnership
24 rollup transaction;

1 “(2) an offering of a security, if a person asso-
 2 ciated with the offering is subject to a statutory dis-
 3 qualification, as defined in section 3(a)(39) of the
 4 Securities Exchange Act of 1934 or any substan-
 5 tially equivalent State law; or

6 “(3) an offering of a security that—

7 “(A) is not listed on the New York Stock
 8 Exchange, the American Stock Exchange, or as
 9 part of a category of securities on another ex-
 10 change or trading system, as determined by the
 11 Commission consistent with the purposes of this
 12 title and the protection of investors;

13 “(B) is not authorized for trading on the
 14 National Market System of the National Asso-
 15 ciation of Securities Dealers Automated
 16 Quotation System; or

17 “(C) will not be listed or authorized for
 18 quotation as described in subparagraph (A) or
 19 (B) upon completion of the transaction.

20 “(c) EXEMPTION FROM STATE LAW FOR TRANS-
 21 ACTIONS IN SECURITIES WITH QUALIFIED PUR-
 22 CHASERS.—Notwithstanding subsection (b), subsection
 23 (a) shall apply with respect to offers and sales to qualified
 24 purchasers, as defined by the Commission.

1 “(d) PRESERVATION OF FILING REQUIREMENTS.—
2 Nothing in this section shall prohibit the securities com-
3 mission (or any agency or office performing like functions)
4 of any State or Territory of the United States, or the Dis-
5 trict of Columbia, from requiring the filing of any docu-
6 ments filed with the Commission pursuant to this title
7 solely for notice purposes, along with a consent to service
8 of process and requisite fee, except that no such filing,
9 consent, or fee may be required with respect to securities,
10 or transactions relating to securities that are of the same
11 class as securities, or are senior to such a class, as de-
12 scribed in subsection (b)(3). Nothing in this section shall
13 prohibit States from enforcing fee requirements in effect
14 on May 31, 1996.

15 “(e) PRESERVATION OF STATE AUTHORITY.—Noth-
16 ing in this section shall affect the jurisdiction of the secu-
17 rities commission (or any agency or office performing like
18 functions) of any State or Territory of the United States,
19 or the District of Columbia, pursuant to the laws of such
20 State or Territory, with respect to any fraud or broker-
21 dealer conduct in connection with securities or securities
22 transactions.”.

1 **SEC. 309. REGULATORY FLEXIBILITY.**

2 (a) UNDER THE SECURITIES ACT OF 1933.—Title I
3 of the Securities Act of 1933 (15 U.S.C. 77a et seq.) is
4 amended by adding at the end the following new section:

5 **“SEC. 28. GENERAL EXEMPTIVE AUTHORITY.**

6 “The Commission, by rule or regulation, may condi-
7 tionally or unconditionally exempt any person, security, or
8 transaction, or any class or classes of persons, securities,
9 or transactions, from any provision or provisions of this
10 title or of any rule or regulation issued thereunder, to the
11 extent that such exemption is necessary or appropriate in
12 the public interest, and is consistent with the protection
13 of investors.”.

14 (b) UNDER THE SECURITIES EXCHANGE ACT OF
15 1934.—Title I of the Securities Exchange Act of 1934 (15
16 U.S.C. 78a et seq.) is amended by adding at the end the
17 following new section:

18 **“SEC. 36. GENERAL EXEMPTIVE AUTHORITY.**

19 “Notwithstanding any other provision of this title,
20 the Commission, by rule, regulation, or order, may condi-
21 tionally or unconditionally exempt any person, security, or
22 transaction, or any class or classes of persons, securities,
23 or transactions, from any provision or provisions of this
24 title or of any rule or regulation issued thereunder, to the
25 extent that such exemption is necessary or appropriate in
26 the public interest, and is consistent with the protection

1 of investors. The Commission shall, by rule or regulation,
 2 determine the procedures under which an exemptive order
 3 under this section shall be granted and may, in its sole
 4 discretion, decline to entertain any application for an
 5 order of exemption under this section.”.

6 **SEC. 310. ANALYSIS OF ECONOMIC EFFECTS OF REGULA-**
 7 **TION.**

8 (a) AUTHORIZATION OF APPROPRIATIONS.—There
 9 are authorized to be appropriated to carry out the Eco-
 10 nomic Analysis Program, including funding for the Office
 11 of Economic Analysis of the Securities and Exchange
 12 Commission, \$6,000,000 for fiscal year 1997, and
 13 \$6,000,000 for fiscal year 1998.

14 (b) ANALYSIS OF ECONOMIC EFFECTS OF REGULA-
 15 TION.—

16 (1) IN GENERAL.—The Chief Economist of the
 17 Commission shall prepare a report on each proposed
 18 regulation of the Commission. Such report shall be
 19 provided to each Commissioner and shall be pub-
 20 lished in the Federal Register before any such regu-
 21 lation of the Commission may become effective.

22 (2) REPORT CONTENTS.—The report required
 23 by this subsection shall include—

24 (A) an analysis of the likely effects of the
 25 proposed regulation on the economy of the

1 United States, and particularly upon the securi-
 2 ties markets and the participants in those mar-
 3 kets; and

4 (B) the estimated impact of the proposed
 5 regulation upon economic and market behavior,
 6 including any impact on market liquidity, the
 7 costs of investment, and the financial risks of
 8 investment.

9 **SEC. 311. PRIVATIZATION OF EDGAR.**

10 Not later than 180 days after the date of enactment
 11 of this Act, the Commission shall submit to the Congress
 12 a report on the Electronic Data Gathering Analysis and
 13 Retrieval System consisting of the Commission's plan for
 14 promoting competition and innovation of the system
 15 through privatization of all or any part of the system.
 16 Such plan shall include such recommendations for action
 17 as may be necessary to implement the plan.

18 **SEC. 312. IMPROVING COORDINATION OF SUPERVISION.**

19 Section 17 of the Securities Exchange Act of 1934
 20 (15 U.S.C. 78q) is amended by adding at the end the fol-
 21 lowing new subsection:

22 “(i) COORDINATION OF EXAMINING AUTHORITIES.—

23 “(1) OBJECTIVE.—The Commission and the ex-
 24 amining authorities shall promote effective and effi-
 25 cient oversight of the activities of brokers and deal-

1 ers, avoiding redundancy, while maintaining the
2 highest level of examination and oversight quality.

3 “(2) ELIMINATION OF DUPLICATION.—The
4 Commission and the examining authorities, through
5 cooperation and coordination of examination and
6 oversight activities, shall eliminate any unnecessary
7 and burdensome duplication in the examination
8 process.

9 “(3) COORDINATION OF EXAMINATIONS.—The
10 Commission and the examining authorities shall
11 share such information, including reports of exami-
12 nations, customer complaint information, and other
13 nonpublic regulatory information, as appropriate to
14 foster a coordinated approach to regulatory over-
15 sight of brokers and dealers that are subject to ex-
16 amination by more than one examining authority.

17 “(4) EXAMINATIONS FOR CAUSE.—At any time,
18 any examining authority may conduct an examina-
19 tion for cause of any broker or dealer subject to its
20 jurisdiction.

21 “(5) CONFIDENTIALITY.—

22 “(A) IN GENERAL.—The provisions of sec-
23 tion 24 shall apply to the sharing of informa-
24 tion in accordance with this subsection. The
25 Commission shall take appropriate action under

1 section 24(c) to assure that such information
2 is not inappropriately disclosed.

3 “(B) APPROPRIATE DISCLOSURE NOT PRO-
4 HIBITED.—Nothing in this paragraph shall au-
5 thorize the Commission or any examining au-
6 thority to withhold information from the Con-
7 gress, or prevent the Commission or any exam-
8 ining authority from complying with a request
9 for information from any other Federal depart-
10 ment or agency requesting the information for
11 purposes within the scope of its jurisdiction, or
12 complying with an order of a court of the Unit-
13 ed States in an action brought by the United
14 States or the Commission.

15 “(6) DEFINITION.—For purposes of this sub-
16 section, the term ‘examining authority’ means the
17 self-regulatory organizations registered with the
18 Commission under this title (other than registered
19 clearing agencies) with the authority to examine, in-
20 spect, and otherwise oversee the activities of a reg-
21 istered broker or dealer.”.

1 **SEC. 313. INCREASED ACCESS TO FOREIGN BUSINESS IN-**
 2 **FORMATION.**

3 (a) THE SECURITIES ACT OF 1993.—Section 2(3) of
 4 the Securities Act of 1933 (15 U.S.C. 77b(3)) is amended
 5 in the third sentence—

6 (1) by striking “not include preliminary” and
 7 inserting “not include the following: (A) prelimi-
 8 nary”; and

9 (2) by inserting before the period “or (B) solely
 10 for purposes of section 5, press conferences held out-
 11 side of the United States, public meetings with is-
 12 suer representatives conducted outside of the United
 13 States, or press related materials released outside of
 14 the United States in which an offshore offering is
 15 discussed, irrespective of whether journalists from
 16 the United States or journalists for publications (in-
 17 cluding on-line services) with circulation in the Unit-
 18 ed States attend such press conferences or meetings
 19 or receive such press related materials.”.

20 (b) THE SECURITIES EXCHANGE ACT OF 1934.—
 21 Section 14 of the Securities Exchange Act of 1934 (15
 22 U.S.C. 78n) is amended by adding at the end the following
 23 new subsection:

24 “(i) TREATMENT OF PRESS RELATED MATERIALS.—

25 “(1) IN GENERAL.—Any person making a ten-
 26 der offer for, or a request or invitation for tenders

1 of, the securities of a foreign issuer may grant jour-
 2 nalists from the United States or journalists for
 3 publications (including on-line services) with circula-
 4 tion in the United States access to press conferences
 5 outside of the United States, meetings with its rep-
 6 resentatives conducted outside of the United States,
 7 or press related materials released outside of the
 8 United States in which an offshore tender offer is
 9 discussed, without being deemed to have used the ju-
 10 risdictional means specified in subsection (d)(1) or
 11 becoming subject to any regulations promulgated by
 12 the Commission, pursuant to subsection (e) of this
 13 section or 13(e), or otherwise, that relate to tender
 14 offers or requests or invitations for tenders.

15 “(2) DEFINITION.—For purposes of this sub-
 16 section, the term ‘foreign issuer’ means any corpora-
 17 tion or other organization—

18 “(A) that is incorporated or organized
 19 under the laws of any foreign country; or

20 “(B) the principal place of business of
 21 which is located in a foreign country.”.

22 **SEC. 314. SHORT-FORM REGISTRATION.**

23 (a) IN GENERAL.—Not later than 180 days after the
 24 date of enactment of this Act, the Commission shall
 25 amend Form S-3 (17 C.F.R. 239.13, relating to registra-

tion under the Securities Act of 1933, of securities of certain issuers offered pursuant to certain types of transactions) to allow such form, or its equivalent, to be used for primary offerings by a registrant if—

(1) the outstanding stock of the registrant held by nonaffiliates of the registrant has an adequate aggregate market value as determined by the Commission; and

(2) such registrant otherwise meets the eligibility requirements for registration using such form, or its equivalent.

(b) ADJUSTMENTS.—Any adjustment to the adequate aggregate market value threshold referred to in subsection (a)(1)(B) by the Commission following the date of enactment of this Act shall apply equally to voting and nonvoting common shares and such other securities as the Commission shall establish.

(c) DEFINITION.—For purposes of this section, the term “stock” includes voting and nonvoting common shares, and such other securities as the Commission shall establish.

SEC. 315. CHURCH EMPLOYEE PENSION PLANS.

(a) AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.—Section 3(c) of the Investment Company

1 Act of 1940 (15 U.S.C. 80a–3(c)) is amended by adding
 2 at the end the following new paragraph:

3 “(14) Any church plan described in section
 4 414(e) of the Internal Revenue Code of 1986, if,
 5 under any such plan, no part of the assets may be
 6 used for, or diverted to, purposes other than the ex-
 7 clusive benefit of plan participants or beneficiaries,
 8 or any company or account that is—

9 “(A) established by a person that is eligible
 10 to establish and maintain such a plan under
 11 section 414(e) of the Internal Revenue Code of
 12 1986; and

13 “(B) substantially all of the activities of
 14 which consist of—

15 “(i) managing or holding assets con-
 16 tributed to such church plans or other as-
 17 sets which are permitted to be commingled
 18 with the assets of church plans under the
 19 Internal Revenue Code of 1986; or

20 “(ii) administering or providing bene-
 21 fits pursuant to church plans.

22 (b) AMENDMENT TO THE SECURITIES ACT OF
 23 1933.—Section 3(a) of the Securities Act of 1933 (15
 24 U.S.C. 77(a)) is amended by adding at the end the follow-
 25 ing new paragraph:

1 “(13) Any security issued by or any interest or
 2 participation in any church plan, company or ac-
 3 count that is excluded from the definition of an in-
 4 vestment company under section 3(c)(14) of the In-
 5 vestment Company Act of 1940.”.

6 (c) AMENDMENTS TO THE SECURITIES EXCHANGE
 7 ACT OF 1934.—

8 (1) EXEMPTED SECURITIES.—Section
 9 3(a)(12)(A) of the Securities Exchange Act of 1934
 10 (15 U.S.C. 78(c)(12)(A)) is amended—

11 (A) in clause (v), by striking “and” at the
 12 end;

13 (B) by redesignating clause (vi) as clause
 14 (vii); and

15 (C) by inserting after clause (v) the follow-
 16 ing new clause:

17 “(vi) any security issued by or any in-
 18 terest or participation in any church plan,
 19 company, or account that is excluded from
 20 the definition of an investment company
 21 under section 3(c)(14) of the Investment
 22 Company Act of 1940; and”.

23 (2) EXEMPTION FROM BROKER-DEALER PROVI-
 24 SIONS.—Section 3 of the Securities Exchange Act of

1 1934 (15 U.S.C. 78(c)) is amended by adding at the
 2 end the following new subsection:

3 “(f) CHURCH PLANS.—No church plan described in
 4 section 414(e) of the Internal Revenue Code of 1986, no
 5 person or entity eligible to establish and maintain such
 6 a plan under the Internal Revenue Code of 1986, no com-
 7 pany or account that is excluded from the definition of
 8 an investment company under section 3(c)(14) of the In-
 9 vestment Company Act of 1940, and no trustee, director,
 10 officer or employee of or volunteer for such plan, company,
 11 account person, or entity, shall be deemed to be a ‘broker’,
 12 ‘dealer’, ‘municipal securities broker’, ‘municipal securities
 13 dealer’, ‘government securities broker’, ‘government secu-
 14 rities dealer’, ‘clearing agency’, or ‘transfer agent’ for pur-
 15 poses of this title—

16 “(1) solely because such plan, company, person,
 17 or entity buys, holds, sells, trades in, or transfers se-
 18 curities or acts as an intermediary in making pay-
 19 ments in connection with transactions in securities
 20 for its own account in its capacity as trustee or ad-
 21 ministrator of, or otherwise on behalf of, or for the
 22 account of, any church plan, company, or account
 23 that is excluded from the definition of an investment
 24 company under section 3(c)(14) of the Investment
 25 Company Act of 1940; and

1 “(2) if no such person or entity receives a com-
 2 mission or other transaction-related sales compensa-
 3 tion in connection with any activities conducted in
 4 reliance on the exemption provided by this sub-
 5 section.”.

6 (d) AMENDMENT TO THE INVESTMENT ADVISERS
 7 ACT OF 1940.—Section 203(b) of the Investment Advisers
 8 Act of 1940 (15 U.S.C. 80b–3(b)) is amended—

9 (1) in paragraph (2), by striking “or” at the
 10 end;

11 (2) in paragraph (3), by striking the period at
 12 the end and inserting “; or”; and

13 (3) by adding at the end the following new
 14 paragraph:

15 “(4) any plan described in section 414(d) of the
 16 Internal Revenue Code of 1986, any person or entity
 17 eligible to establish and maintain such a plan under
 18 the Internal Revenue Code of 1986, or any trustee,
 19 director, officer, or employee of or volunteer for any
 20 such plan or person, if such person or entity pro-
 21 vides investment advice exclusively to any plan, per-
 22 son, or entity or any company, account, or fund that
 23 is excluded from the definition of an investment
 24 company under section 3(c)(14) of the Investment
 25 Company Act of 1940.”.

1 (e) AMENDMENT TO THE TRUST INDENTURE ACT OF
 2 1939.—Section 304(a)(4)(A) of the Trust Indenture Act
 3 of 1939 (15 U.S.C. 77ddd(4)(A)) is amended by striking
 4 “or (11)” and inserting “(11), or (14)”.

5 (f) PROTECTION OF CHURCH EMPLOYEE BENEFIT
 6 PLANS UNDER STATE LAW.—

7 (1) REGISTRATION REQUIREMENTS.—Any secu-
 8 rity issued by or any interest or participation in any
 9 church plan, company, or account that is excluded
 10 from the definition of an investment company under
 11 section 3(c)(14) of the Investment Company Act of
 12 1940, and any offer, sale, or purchase thereof, shall
 13 be exempt from any law of a State that requires reg-
 14 istration or qualification of securities.

15 (2) TREATMENT OF CHURCH PLANS.—No
 16 church plan described in section 414(e) of the Inter-
 17 nal Revenue Code of 1986, no person or entity eligi-
 18 ble to establish and maintain such a plan under the
 19 Internal Revenue Code of 1986, no company or ac-
 20 count that is excluded from the definition of an in-
 21 vestment company under section 3(c)(14) of the In-
 22 vestment Company Act of 1940, and no trustee, di-
 23 rector, officer, or employee of or volunteer for any
 24 such plan, person, entity, company, or account shall
 25 be required to qualify, register, or be subject to reg-

1 ulation as an investment company or as a broker,
 2 dealer, investment adviser, or agent under the laws
 3 of any State solely because such plan, person, entity,
 4 company, or account buys, holds, sells, or trades in
 5 securities for its own account or in its capacity as
 6 a trustee or administrator of or otherwise on behalf
 7 of, or for the account of, or provides investment ad-
 8 vice to, for, or on behalf of, any such plan, person,
 9 or entity or any company or account that is excluded
 10 from the definition of an investment company under
 11 section 3(c)(14) of the Investment Company Act of
 12 1940.

13 (g) FURTHER AMENDMENTS TO THE SECURITIES
 14 EXCHANGE ACT OF 1934.—Section 3 of the Securities
 15 Exchange Act of 1934 (15 U.S.C. 78c) is amended by add-
 16 ing at the end the following new subsection:

17 “(g) DISCLOSURE TO CHURCH PLAN PARTICI-
 18 PANTS.—A person that maintains a church plan that is
 19 excluded from the definition of an investment company
 20 solely by reason of section 3(c)(14) of the Investment
 21 Company Act of 1940 shall provide disclosure to plan par-
 22 ticipants, in writing, and not less frequently than annu-
 23 ally, and for new participants joining such a plan after
 24 May 31, 1996, prior to joining such plan, that—

1 “(1) the plan, or any company or account main-
 2 tained to manage or hold plan assets and interests
 3 in such plan, company, or account, are not subject
 4 to registration, regulation, or reporting under this
 5 title, the Securities Act of 1933, the Investment
 6 Company Act of 1940 or State securities laws; and

7 “(2) plan participants and beneficiaries there-
 8 fore will not be afforded the protections of those pro-
 9 visions.”.

10 **SEC. 316. PROMOTING GLOBAL PREEMINENCE OF AMER-**
 11 **ICAN SECURITIES MARKETS.**

12 It is the sense of the Congress that—

13 (1) the United States and foreign securities
 14 markets are increasingly becoming international
 15 securities markets, as issuers and investors seek the
 16 benefits of new capital and secondary market oppor-
 17 tunities without regard to national borders;

18 (2) as issuers seek to raise capital across
 19 national borders, they confront differing accounting
 20 requirements in the various regulatory jurisdictions;

21 (3) the establishment of a high-quality com-
 22 prehensive set of generally accepted international ac-
 23 counting standards in cross-border securities offer-
 24 ings would greatly facilitate international financing
 25 activities and, most significantly, would enhance the

1 ability of foreign corporations to access and list in
2 United States markets;

3 (4) in addition to the efforts made before the
4 date of enactment of this Act by the Commission to
5 respond to the growing internationalization of secu-
6 rities markets, the Commission should enhance its
7 vigorous support for the development of high-quality
8 international accounting standards as soon as prac-
9 ticable; and

10 (5) the Commission, in view of its clear author-
11 ity under law to facilitate the access of foreign cor-
12 porations to list their stocks in United States mar-
13 kets, should report to the Congress, not later than
14 one year after the date of enactment of this Act on
15 progress in the development of international ac-
16 counting standards and the outlook for successful
17 completion of a set of international standards that
18 would be acceptable to the Commission for offerings
19 and listings by foreign corporations in United States
20 markets.

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